



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 8, 1947

Overruled by C-6/
where conflicts

Hon. Stirling T. Phelps Opinion No. V-66
County Attorney
Webb County
Laredo, Texas

Re: Construction of Article
§27b, Sections 1, 2,
and 5, Vernon's Anno-
tated Penal Code of
Texas

Dear Mr. Phelps:

This is in reply to your letter of January 22, 1947, supplemented by your letter of January 30, 1947, requesting the opinion of this Department on the construction of Article §27b, Sections 1, 2, and 5, V.A.P.C.

We summarize the facts stated in your two letters as follows:

"In Laredo, Texas, there are a number of companies and persons engaged in the transportation of commodities for compensation or hire between Laredo, Texas, on the one hand, and Nuevo Laredo, Mexico, and interior points of Mexico, on the other hand, and vice versa. Reciprocity with respect to registration of motor vehicles, trailers and semi-trailers that are operated for hire does not in fact exist between Texas and the Republic of Mexico. In some instances, residents of Laredo, Texas, that are engaged in this motor transportation business, in an effort to escape penalties imposed by Mexican authorities on Texas motor vehicles operating into and out of Mexico for hire, use trailers and semi-trailers belonging to nonresident Mexicans. These trailers and semi-trailers in most instances have no Mexico registration plates of any kind or character.

"The County Attorney of Webb County is of the opinion that under Article §27b, Sections 1, 2, and 5, V. A. P. C., none of the trailers and semi-trailers above described can be operated in Texas for compensation or hire unless registered in accordance with Texas Law regulating

the registration of Texas owned trailers and semi-trailers operated for compensation and hire; and that a nonresident temporary registration certificate provided for in Article 827b, V. A. P. C., does not apply to motor vehicles, trailers and semi-trailers used for compensation or hire."

We have consulted the Mexican Consulate in Austin, Texas, and we are advised that reciprocity does not exist between the Republic of Mexico and Texas in regard to the registration of motor vehicles, trailers and semi-trailers operated for compensation or hire, and that the Laws of Mexico do not authorize a motor vehicle, trailer or semi-trailer that is being operated for hire to make any trips into the Republic of Mexico without being properly registered under the Laws of Mexico, even though the vehicle is properly registered in the State or Country of the owner of the particular vehicle. Based upon the facts stated in your letter, as well as the representations made to us by the Mexican Consulate, we assume as a fact that reciprocity does not exist between Mexico and Texas with regard to the registration of vehicles operated for hire.

On the facts stated in your two letters, and as summarized above, you ask our opinion as to:

(1) What constitutes a violation of Article 827b, Section 2, V. A. P. C. under the facts stated?

(2) Does Article 827b, Section 5, V. A. P. C., apply to others than a nonresident?

Article 827b, Section 1, V. A. P. C., defines a "vehicle", "motor vehicle", "trailer" and "semi-trailer" as follows:

"Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks."

"Motor Vehicle" means every vehicle as herein defined which is self-propelled."

"Trailer" means every vehicle without motive power designed or used for carrying property or

passengers wholly on its own structure and to be drawn by a motor vehicle."

"'Semi-trailer' means every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some parts of its own weight and that of its own load rests upon or is carried by a motor vehicle."

Article 827b, Section 2, V. A. P. C., reads in part as follows:

"A nonresident owner of a motor vehicle, trailer or semi-trailer which has been duly registered for the current year in the State or country of which the owner is a resident and in accordance with the laws thereof, may, in lieu of registering such vehicle as otherwise required by law, apply to the State Highway Department through a County Tax Collector for the registration thereof as provided by law, except that the privileges granted as otherwise provided for in this Act shall not apply to any motor vehicle, trailer or semi-trailer operated within this State for the transportation of persons or property for compensation or hire. . ." (Emphasis ours)

Under the above quoted portion of the Act in order for a person to be entitled to registration of a motor vehicle, trailer or semi-trailer as a nonresident and thereby secure a temporary registration certificate, he must be (1) a nonresident of the state; (2) the vehicle in question must have been duly registered for the current year in the State or country of which he is a resident; (3) the registration must have been in accordance with the laws of the State or country of which he is a resident; and (4) the vehicle in question must not be operated for compensation or hire within this State.

A portion of the question presented, in so far as it relates to a truck (which under the definition given in the Act is a motor vehicle), has been heretofore answered by this Department in Opinion No. 09, dated January 10, 1939, from which we quote:

"Article 827b, Section 2, of the Penal Code provides that motor vehicles registered under the laws of another state, and being operated for compensation and hire, will be permitted to

come into Texas two trips per month, and not to stay in excess of four days on any one trip, providing truck operators from Texas operating for compensation and hire are granted the same privileges under the laws of the other state. The State of Oklahoma does not grant this privilege to operators from Texas, therefore, if the trucks in question are being operated for compensation and hire they would not be permitted to enter Texas without being properly registered under the laws of the State of Texas, and you are so advised. (Emphasis ours)

".. . ."

The Act above quoted states "except that the privileges granted . . . shall not apply to any motor vehicle, trailer or semi-trailer operated within this state for the transportation of persons or property for compensation or hire", and we are therefore of the opinion that inasmuch as the trailers and semi-trailers described by you are being operated in this state for compensation and hire, it is being done in violation of law, and they should not be permitted to operate in the State of Texas without being properly registered under the laws of this state.

You are further advised that in view of the fact that the trailers and semi-trailers are being operated for hire, such prohibits the owner from obtaining a "non-resident registration certificate" as provided for in the Act.

We express no opinion as to whether or not "trailers" and "semi-trailers" are included in the so-called "reciprocity clause" of the Act, because under the facts stated, reciprocity does not in fact exist.

In your second question you ask whether or not Section 5 of Article 827b, supra, applies to others than nonresidents.

Article 827b, Section 5, V. A. P. C., provides in part as follows:

"No non-resident owner of a motor vehicle, trailer or semi-trailer shall operate any such vehicle or cause or permit it to be operated upon the public highways of this State, either

before or while it is registered under this Section, unless there shall at all times be displayed thereon the registration number plates assigned to said vehicle for the current calendar year by the country or state of which such owner is a resident, nor unless the certificate of temporary registration, when issued as in this section provided shall be placed on said motor vehicle in the manner to be specified by the Department. Provided the Department shall not adopt any patented container, holder or device for the certificate of temporary registration nor shall any visitor be required by said Department to purchase or have said container, holder or device for said certificate"

There being no court decisions relative to the Article in question, it is necessary that we review and study the various legislative enactments relating thereto in order to ascertain the legislative intent. The Act (Article 827b), of which Section 5 is a part, was originally enacted and embraced in Senate Bill No. 95, Forty-first Legislature, 1930, Fourth Called Session. The caption to this bill reads as follows:

"An Act providing for the temporary registration or visiting privileges in this State of vehicles owned by citizens of another state or country and duly registered under the laws of said state or country for the current year; prescribing restrictions under which vehicles may be operated; prescribing penalties for any violation hereof; repealing all laws and parts of laws in conflict herewith; and declaring an emergency."

Senate Bill No. 95 was repealed in its entirety by House Bill No. 83, Forty-first Legislature, 1930, Fifth Called Session, and House Bill No. 83 gave us, with the exception of Section 2, Article 827b in its present form. The caption of House Bill No. 83 reads in part as follows:

"An Act providing for the temporary registration of visiting privileges in this State, of vehicles owned by citizens of another state or country and duly registered under the laws of said state or country for the current year

. . . prescribing restrictions under which said vehicles may be operated; providing certain exceptions and exemptions . . . " (Emphasis ours)

Section 8 of House Bill No. 83 recited, among other things, the "fact that the law now on the Statute books of this State regulating the operation of motor vehicles owned by non-residents is burdensome and . . . " (Emphasis ours)

It is obvious that Article 827b, V. A. P. C., is a statute designed for, and for the purpose of, regulating vehicles of nonresident owners temporarily in this state. It was designed to grant nonresident owners certain privileges with reference to the operations of their vehicles while temporarily within this state, and the Legislature in enacting the law obviously did not want to extend any privilege to a nonresident owner that a resident citizen of this state did not enjoy.

Article 807b, Section 6, V. A. P. C., requires any person who operates a road tractor, motorcycle, trailer or semi-trailer upon the public highways of this state to have attached thereto and displayed on the rear thereof a license plate duly and lawfully assigned therefor for the current year. It has been many times declared by the courts, and observed by writers on the subject of "Motor Vehicles", that the main purpose of a license plate, other than taxation, is for the purpose of identification. 5 Am. Jur., Sections 91, 111, pages 567, 573. In enacting Section 5 of Article 827b, supra, the Legislature brought forward this requirement with reference to nonresident owners of vehicles who secured temporary registration certificates, and provided for penalties for disobedience thereof.

From what has been said above, we are of the opinion, and you are so advised, that Section 5 of Article 827b, V. A. P. C., was designed for, and applies to nonresident owners of vehicles, and it was not designed to apply to others than nonresident owners.

SUMMARY

(1) Trailers and semi-trailers as defined in Article 827b, Section 1, V. A. P. C., that are owned by nonresidents and used in transportation for compensation or hire over the public highways of Texas cannot obtain a "temporary registration certificate" as provided

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for in Article 827b, supra, but in order for their operation to be lawful, such trailers and semi-trailers must be registered in accordance with Texas Laws regarding the registration of commercial vehicles.

(2) Article 827b, Section 5, V. A. P. C., was designed for, and applies to nonresident owners of vehicles, and not to others.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Charles D. Mathews*
Charles D. Mathews
Assistant

APPROVED FEB. 8, 1947

Price Daniel
ATTORNEY GENERAL

CDM:jt:jrb

Approved Opinion Committee
By BWB, Chairman